

REMARKS/ARGUMENTS

In the communication dated January 16, 2008, the Examiner required the election of species. Accordingly, Applicants elect with traverse the following:

First Species: inner controlling layer a copolymer from methyl methacrylate and ethylacrylate.

Second Species: a modulatory effect succinic acid or a salt thereof.

The Examiner alleges that the species recited in the claims are patentably distinct. However the burden of proof is on the Office to provide reasons and/or examples to support any conclusions with regard to patentable distinction M.P.E.P. § 803.

Applicants request that should the elected invention be found allowable, the Examiner expand the search to include the non-elected species.

Divisional applications filed thereafter claiming the non-elected inventions should not be subject to a double patenting ground of rejection, 35 U.S.C. § 121 *In re Joyce* (Comr. Pats. 1957) 115 USPQ 412.

Further, M.P.E.P. § states as follows:

If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on its merits even though it includes claims to distinct and independent inventions.

Applicants submit that a search of the entire claim would not constitute a serious burden on the Office.

In chemical cases, a specified group of materials which do not necessarily belong to an otherwise class can be claimed together. Separate substances which could not be defined by generic language but which nevertheless have a community of chemical or physical characteristics should be examined together if they have at least one property in common


which is mainly responsible for the claimed relationship. The same utility in a generic sense suffices.

Applicants make no statement regarding the patentable distinctness of the species, but note that for the election of species to be proper, there must be patentable differences between the species as claimed. M.P.E.P. § 808.01(a).

Applicants' election is for examination purpose only.

Respectfully submitted,

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